

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.38 of 2011

JUDGMENT:

Heard Smt.P.Rajeswari, learned counsel for the appellant/claim petitioner and learned counsel for 2nd respondent/insurer.

2. This appeal has been filed by the claim petitioner seeking enhancement of compensation granted in the decree and award dated 17.09.2010 in M.V.O.P.No.66 of 2009 passed by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad.

3. The claim petitioner's case is brief is that on 20.10.2008 at about 11.30 PM while her mother Galam Govindamma was crossing the road to fetch drinking water, a Lorry bearing registration No.AP 16 TW 6843 (hereinafter 'the lorry') driven in rash and negligent manner, dashed her and caused grievous injuries. Immediately she was moved to the hospital where she was declared dead. Thereupon pleading loss of dependency, filed petition claiming compensation of Rs.4,00,000/-.

4. In the enquiry, the petitioner got examined herself as PW-1 and marked Exs.A-1 to A-10 and on behalf of respondents the Assistant Manager of the insurer/2nd respondent was examined as RW-1 and got

marked documents Exs.B-1-copy of Policy and Ex.B-2-charge-sheet in crime No.1056 of 2018.

5. The Tribunal after analyzing the evidence held that the accident occurred due to the rash and negligent driving of the driver of the Lorry and awarded Rs.1,34,500/- with interest @ 7.5% per annum against the owner and insurer of the Lorry/1st and 2nd respondents.

6. Aggrieved by the quantum awarded by the Tribunal, the petitioner in appeal contended that the Tribunal should have considered the age mentioned in Arogya Sri Card of the deceased/Ex.A-8 and the monthly income as labour. Further, the Tribunal failed to consider future prospects and awarded only meager compensation under conventional heads. Thus, prayed for re-evaluation and to grant just compensation.

7. The learned counsel for 2nd respondent/insurer submitted that the Tribunal had leniently considered the claim of the claim petitioner and awarded just compensation. The contentions raised in appeal are not substantiated by any material. Thus, the awarded compensation deserves to be confirmed.

8. In this position, the point that arises for determination is:

“Whether the compensation awarded by the Tribunal to the claim petitioner is just and proper?”

9. The petitioner as PW-1 deposed that the deceased was aged about 42 years and as daily labourer used to earn Rs.3,600/- per month. However, no specific document is filed to prove the age and income. The Tribunal basing on the entries in the post mortem examination report/Ex.A-5 concluded that the deceased was aged about 50 years. Though the petitioner pleaded that the age of the deceased as mentioned in Arogya Sri Card/Ex.A-8 has to be taken into account, a perusal of the said document is not referring to the age of her mother. Thus, considering the age by the entries in postmortem examination report found reasonable.

10. As the pleaded occupation of the deceased is part of unorganized sector, no document can be expected, however, having regard to the earning capacity at the age of the deceased and the daily wages at relevant period, the monthly income of Rs.3,000/- can be believed.

11. The Hon'ble Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others*¹ held that in assessment of compensation for the death future prospects of the self employed shall also be included. Accordingly, having regard to the age and occupation of the deceased 10% of the income has to be added towards future prospects. Thus the annual income would be of Rs.39,600/-.

¹ (2017) 16 SCC 860

12. Further, taking into account the dependency pleaded by the claim petitioner and by the directives of the Hon'ble Apex Court in *Sarla Verma & Ors Vs. Delhi Transport Corporation & Another*², 1/3rd of the income shall be deducted towards personal expenses of the deceased, hence the annual contribution of the deceased to the claim petitioners would be Rs.26,400/- and if this amount is multiplied with appropriate multiplier to the age of the deceased i.e., 13, the amount would come to Rs.3,43,200/-(Rs.26,400 x 13). The petitioner is entitled to this amount under the head of 'Loss of Dependency'.

13. In addition, the claim petitioner is also entitled for compensation under 'conventional heads' as prescribed in the dictum of *Pranay Sethi* (supra) i.e., Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral expenses. As per the dictum of Hon'ble Supreme Court in *United India Insurance Company Limited vs. Satinder Kaur @ Satwinder Kaur and others*³, the petitioner is entitled for parental consortium of Rs.40,000/-,

14. Therefore, the petitioner is eligible for the following amounts, viz.,
:

² ACJ 2013 Page 1409

³ Civil Appeal No.2705 of 2020, dt.30.06.2020

DESCRIPTION	AMOUNT (Rs.)
Loss of Dependency	3,43,200.00
Loss of estate	15,000.00
Funeral expenses	15,000.00
Parental consortium to petitioner	40,000.00
TOTAL	4,13,200.00

15. The Section 168 of the Motor Vehicles Act casts statutory duty on the Court to award just and reasonable compensation. Further the Hon'ble Apex Court in **Nagappa vs. Gurudayal Singh & others**⁴, reinforced the power of the Courts in awarding reasonable compensation, even if it is higher than the claimed. Accordingly, the above arrived amount is awarded to the petitioners as just and reasonable compensation.

16. For the aforesaid, the Appeal is allowed in the following terms:

- (i) The claim petitioner is awarded Rs.4,13,200/- (Rupees Four Lakh Thirteen Thousand and Two Hundred only) with interest @ 7.5% per annum, from the date of petition till the date of realization;
- (ii) The owner/1st respondent and the insurer/2nd respondent are jointly and severally liable to pay the awarded compensation and they are directed to deposit the awarded

⁴ (2003) 2 SCC 274

amount within one month from the date of receipt of a copy of this judgment.

(iii) On deposit, the claim petitioner is permitted to withdraw the entire amount.

(iv) In the above terms, the impugned award stands modified.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date:01.09.2022

svl